

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
FEB 27 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0056
)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RICKY LAMAR SIMMONS,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
)	
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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054467

Honorable Gus Aragon, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and David A. Sullivan

Tucson
Attorneys for Appellee

Harriette P. Levitt

Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 Following a jury trial, Ricky Simmons was convicted of two counts of sexual assault, one count of attempted sexual assault, and one count of sexual abuse. He was sentenced to two consecutive, presumptive, seven-year terms of imprisonment on the sexual assault convictions. The court suspended imposition of sentence and placed Simmons on lifetime probation for the attempted sexual assault and sexual abuse convictions. On appeal, he challenges the sufficiency of the evidence supporting the guilty verdicts. We affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdicts. *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). In October 2005, seriously ill as the result of methamphetamine use and infection, T. was sleeping, naked, on her couch when "something wet" hit her arm. She awoke to find her friend, Simmons, masturbating and ejaculating on her. Over the next several hours, Simmons attempted to engage in sexual intercourse with T. At trial, T. testified Simmons placed his finger in both her vagina and her anus, attempted to penetrate her vagina with his penis, poured cocaine on her breast and licked it off, hit her with a shoe, and threatened to kill her when she was not compliant. Before leaving, he told her, "You're dying. I'm not even going to have to kill you. You're going to do all the work for me." He then told her he would be back later to bury her body and left. T. thereafter crawled from her mobile home to the road, where she was discovered when an acquaintance passed by. She

was eventually taken to a hospital where medical personnel treated her and collected physical evidence of the assault.

Discussion

¶3 Simmons’s sole argument on appeal is that the evidence was insufficient to support a guilty verdict for any of his convictions. We will not overturn a conviction on this basis unless there was a complete lack of evidence supporting the conviction. *State v. Johnson*, 215 Ariz. 28, ¶ 2, 156 P.3d 445, 446 (App. 2007). A conviction may properly rest on the uncorroborated testimony of the victim of a sexual assault unless “the story is physically impossible or so incredible that no reasonable person could believe it.” *State v. Williams*, 111 Ariz. 175, 178, 526 P.2d 714, 717 (1974).

¶4 Without citation to authority, Simmons asserts his convictions should be overturned because the “only evidence . . . support[ing] [T.]’s contention that there was sexual contact between her and [him] . . . was the DNA test results, which established that [Simmons] . . . had had seminal contact with [T.]’s genitals.” Simmons asserts that “[a]ll of her other claims . . . were either unsupport[ed] or contraindicated [sic].” He then points to the absence of physical evidence to corroborate some details of T.’s testimony. As noted, however, a sexual assault conviction may be properly based on the victim’s uncorroborated testimony. *Id.* A lack of physical evidence supporting T.’s statements, therefore, goes to the weight and credibility of her testimony, which were matters for the jury to determine. *See State v. Lucero*, 204 Ariz. 363, ¶ 20, 64 P.3d 191, 194 (App. 2003). Similarly, Simmons

contends that, because T.'s ability to accurately recall the attack was compromised by her drug use, that circumstance also demonstrates insufficiency of the evidence. Evidence of a witness's intoxication at the time of observation, however, is simply another factor bearing on the credibility of his or her testimony. *See State v. Orantez*, 183 Ariz. 218, 222, 902 P.2d 824, 828 (1995); *Lucero*, 204 Ariz. 363, ¶ 20, 64 P.3d at 194.

¶5 Simmons does not allege T.'s testimony was "physically impossible or so incredible that no reasonable person could believe it." *Williams*, 111 Ariz. at 178, 526 P.2d at 717. In fact, none of his arguments actually attack the sufficiency of the evidence but, rather, T.'s overall credibility. T.'s trial testimony, however, was neither impossible nor significantly impeached. She stated Simmons had digitally penetrated her vagina and her anus without her consent, which supported his two convictions for sexual assault. *See* A.R.S. §§ 13-1401, 13-1406. She further testified he had attempted to insert his penis into her vagina several times without her consent. Scientific analysis revealed the presence of Simmons's DNA¹ on T.'s vulva and inside her vagina. Thus, there was ample evidence supporting Simmons's conviction for attempted sexual assault. *See* §§ 13-1001, 13-1401, 13-1406. Finally, T. testified Simmons had poured a white powder on her breast and licked it off, establishing the elements of sexual abuse. *See* § 13-1404. In short, the record refutes Simmons's claim that the evidence was insufficient to support a guilty verdict for any of his convictions.

¹Deoxyribonucleic acid.

Disposition

¶6 Simmons's convictions and sentences are affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge